

## **REMARKS**

Claims 1, 3-15, 18, 19, & 27-31 are pending in this patent application. Claims 2, 16, and 17 are hereby cancelled. Claims 1, 27, and 28 are hereby amended. The amendments more clearly describe the invention and any substantive changes are supported by the specification including paragraphs 25, 73, and 78. Claims 29-31 are hereby added. The new claims are fully supported by the specification including paragraphs 25, 73, 78 and 88. No new matter has been added.

### Rejection under 35 U.S.C. §102(e)

Claims 1-7, 11-13, 18, and 19 have been rejected under 35 U.S.C. §102(e) as allegedly being anticipated by U.S. Patent Number 6,387,671 (“Rubinsky reference”). Applicants traverse because the Rubinsky reference does not disclose each and every claim element.

The Rubinsky reference is directed to electrical impedance tomography techniques (see Title) for use with electroporation devices, and fails to teach each and every element of the current invention. The Patent Office cites to specific sections and figures of the Rubinsky reference, but all such sections fail to disclose an electroporation device that uses a controller to control a pulse of electrical energy to expose tissue to a constant current. For example, Fig. 7 is cited but the figure fails to show needle electrodes penetrating desired tissue to expose same to a constant current. Also, sections of the Rubinsky reference cited (4:38-57; 10:44-45, 52; 11:20-36; 13:45-63; and 14:26-34, 59-63), while plentiful, all recite basic elements of electroporation and devices to perform same. Nowhere in the Rubinsky reference is there discussion of an electroporation device that includes a controller that can manage or control the delivery of the electrical pulse so as to expose tissue to a constant current. In fact, the Rubinsky reference discusses and shows examples of electroporating tissue, or cells, in a chamber ex vivo – Applicants refer the Patent Office to Example 1, col. 17, Fig. 2, and ln. 43-47, which states, “The numerous applications of this microdiffusion device will be readily apparent. For example, the device can be used to infuse a cell with a cryopreservative such as glycerol by filling the upper chamber 16 . . . .”

In response to the Patent Office recitation of col. 11, ln. 24-27 (paragraph bridging page 4 and 5 of the Final Office Action), Applicants submit that that passage points out that an electroporation device to be used with the tomography techniques “**may** provide constant DC current or AC current;” however, as mentioned above, the Rubinsky reference does not disclose or teach any devices that deliver constant current. Furthermore, the Applicants’ invention is in part a device that is capable of delivering an electrical pulse and managing such delivery as to **expose** the desired tissue to **a constant current**. Providing and exposing are different.

In light of the forgoing, the rejection for alleged anticipation is improper and should be withdrawn.

Rejection under 35 U.S.C. §103(a)

Claims 8-10, 14-17, and 27 stand rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over the Rubinsky reference alone or in combination with secondary references U.S. Patent Nos. 5,318,514 (“Hofmann I reference”) and 5,702,359 (“Hofmann II reference”). Applicants traverse because even if the combination was appropriate the secondary references fail to add to the deficiencies of the Rubinsky reference.

As discussed in the 35 U.S.C. §102(e) arguments, above, the Rubinsky reference fails to teach an electroporation device that includes, at least, a controller that is capable of managing the electrical pulse generated so as to expose the desired tissue to a constant current. The Hofmann I and Hofmann II references have been cited by the Patent Office for their alleged teaching of an electrode assembly with a mounting structure and activation switch and a central channel central to the plurality of electrodes, respectively; however both references fail to provide any teaching that provides for that missing in the Rubinsky reference.

Accordingly, the rejection under Section 103 is improper and should be withdrawn. Favorable consideration and an early notice of allowance are earnestly solicited.

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RESPONSE UNDER 37 C.F.R. §1.116  
EXPEDITED PROCEDURE  
GROUP ART UNIT 3763

CONCLUSION

Applicants submit that the pending claims are in condition for allowance and the same is respectfully requested. If the Examiner believes that a telephone conversation would further the prosecution of this case, the undersigned is available at the number below.

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